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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 1078

A. SEARLE PINNEY, J. TYLER PATTERSON, JR., FREDERICK POPE, JR., and PETER P. MARIANI,

Appellants,

v.

OLIVER BUTTERWORTH, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF IN OPPOSITION TO MOTION TO AFFIRM; AND MOTION TO ADVANCE ORAL ARGUMENT

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BRIEF IN OPPOSITION TO MOTION TO AFFIRM

Appellees' Motion to Affirm should be denied.

Rule 16, subsection 1 (e), of this Court, declares that a motion to affirm a judgment on appeal from a federal court must be "grounded on an allegation "that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument." Yet, appellees state in their "Motion to Affirm": "Appellees cannot now say that the questions presented by this case are so unsubstantial as not to require further argument." (page 1). The balance of

the Motion to Affirm is given to prophecy as to this Court's future pronouncements and to argument on the merits.

Since appellees concede that the questions presented by this case are substantial, no proper purpose is served by their Motion.

The questions stated by appellants in their Jurisdictional Statement present to this Court in clear and unambiguous language the very real and substantial issues in this case. This case presents in purest form yet submitted to this Court the question of the validity of the principle of unit representation in one house of a bicameral legislature, the other house of which is based upon population. That principle of representation must be tested by the requirements of the Equal Protection Clause of the Fourteenth Amendment. It cannot be tested, as appellees have continually sought to test it, by measuring it against the standard of its conformity to the principle of equally-populated constituencies; for such a process of reasoning is circular, and assumes the result it seeks.

The questions raised by this appeal are substantial. They present the most fundamental and far-reaching constitutional issues ever to have arisen in the State of Connecticut. They go to the very root of a system of government which has operated effectively in Connecticut for 326 years. Such questions ought not to be resolved

until full briefs and oral arguments have been presented to this Court.

Respectfully submitted,

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MOTION TO ADVANCE ORAL ARGUMENT

Appellants respectfully move the Court for an order advancing the oral argument in the above-entitled case to the earliest date convenient to this Court, having regard to the similarity of issues in the instant case and cases now pending in this Court.

This motion is made in conformity with Paragraph (6) (f) of the Judgment as amended by the Order on Motion to Amend Findings of Fact and Judgment, re-